

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

# SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14<sup>th</sup> day of March, two thousand thirteen.

PRESENT: DENNIS JACOBS,  
                    Chief Judge,  
ROSEMARY S. POOLER,  
                    Circuit Judge.  
ERIC N. VITALIANO,  
                    District Judge.\*

- - - - -X  
STEPHANIE PRINCE,  
Plaintiff-Appellant,

-V.-

12-2198

MICHAEL J. ASTRUE, COMMISSIONER OF  
SOCIAL SECURITY,  
Defendant-Appellee,

\* The Honorable Eric N. Vitaliano, District Judge of the United States District Court for the Eastern District of New York, sitting by designation.

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2 **FOR APPELLANT:** MARK SCHNEIDER, Plattsburgh, New  
3 York.  
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5 **FOR APPELLEES:** MICHELLE L. CHRIST, Special  
6 Assistant United States Attorney  
7 (Stephen P. Conte, Regional  
8 Chief Counsel, on the brief),  
9 for Richard S. Hartunian, United  
10 States Attorney for the Northern  
11 District of New York, Syracuse,  
12 New York.  
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14 Appeal from a judgment of the United States District  
15 Court for the Northern District of New York (Homer, M.J.)  
16

17 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
18 **AND DECREED** that the judgment of the district court be  
19 **AFFIRMED.**  
20

21 Stephanie Prince appeals from the judgment of the  
22 United States District Court for the Northern District of  
23 New York (Homer, M.J.) granting the motion for judgment on  
24 the pleadings of defendant-appellee Michael J. Astrue,  
25 Commissioner of the Social Security Administration,  
26 affirming the denial of Prince's claim for disability  
27 benefits, and denying Prince's request for consideration of  
28 new evidence. We assume the parties' familiarity with the  
29 underlying facts, the procedural history, and the issues  
30 presented for review.  
31

32 Prince applied for disability benefits on January 27,  
33 2005, alleging an inability to work due to anxiety,  
34 fibromyalgia, migraines, bipolar disorder, and chronic pain.  
35 Following hearings in March 2007 and February 2010,  
36 Administrative Law Judge ("ALJ") Carl E. Stephen denied  
37 Prince's application because, while several of her  
38 conditions constituted severe impairments, she still  
39 retained the residual functional capacity to perform  
40 unskilled light work. On May 24, 2012, the district court  
41 held that the ALJ's decision was supported by substantial  
42 evidence.  
43

44 On appeal, Prince argues that the district court erred  
45 in upholding the ALJ's determination that she was neither  
46 physically nor mentally disabled.  
47

1        "When deciding an appeal from a denial of disability  
2 benefits, we focus on the administrative ruling rather than  
3 the district court's opinion." Green-Yougner v. Barnhart,  
4 335 F.3d 99, 105 (2d Cir. 2003) (internal quotation marks  
5 omitted). "In reviewing the district court's decision, we  
6 undertake our own plenary review of the administrative  
7 record." Schall v. Apfel, 134 F.3d 496, 500-01 (2d Cir.  
8 1998) (citation and internal quotation marks omitted). A  
9 court may set aside the Commissioner's decision only if it  
10 is based upon legal error or if his factual findings are not  
11 supported by substantial evidence in the record as a whole.  
12 See 42 U.S.C. § 405(g); Burgess v. Astrue, 537 F.3d 117, 128  
13 (2d Cir. 2008). Substantial evidence is "more than a mere  
14 scintilla" and "means such relevant evidence as a reasonable  
15 mind might accept as adequate to support a conclusion."  
16 Richardson v. Perales, 402 U.S. 389, 401 (1971) (internal  
17 quotation marks omitted).

18  
19        The district court properly rejected Prince's  
20 contention that the ALJ erred in not finding that her  
21 fibromyalgia constituted a per se disability under Appendix  
22 1 of the regulations. 20 C.F.R. Part 404, Subpart P,  
23 Appendix 1. "[M]ere diagnosis of fibromyalgia without a  
24 finding as to the severity of symptoms and limitations does  
25 not mandate a finding of disability[.]" Rivers v. Astrue,  
26 280 F. App'x 20, 22 (2d Cir. 2008); see also Selian v.  
27 Astrue, No. 12-871, 2013 WL 627702, --- F.3d --- (2d Cir.  
28 Feb. 21, 2013). Furthermore, the ALJ's residual functional  
29 capacity determination, which took into account Prince's  
30 fibromyalgia, was supported by substantial evidence. Drs.  
31 Todd D. Daugherty and Edward S. Leib, rheumatologists who  
32 first diagnosed Prince with fibromyalgia, noted that  
33 Prince's "joints and muscles are essentially healthy" and  
34 encouraged her to pursue employment, recreational activity,  
35 and exercise. JA 197. Dr. Nader Wassef observed normal  
36 reflexes, a full range of motion, and full strength in  
37 Prince's extremities, and advised her only to avoid any form  
38 of "extreme body contact." JA 237. Similarly, Dr. David G.  
39 Welch observed "relatively little physical pathology . . .  
40 other than a clear-cut diagnosis of fibromyalgia" and found  
41 that Prince had excellent strength, sensation, and range of  
42 motion in her core and in all four extremities. JA 307-09.

43  
44        Prince argues that the ALJ erred by refusing to give  
45 controlling weight to the opinion of Dr. Kokernot, a  
46 treating physician, who concluded that Prince had extreme  
47 limitations in her ability to carry out detailed

1 instructions and respond appropriately to workplace  
2 pressures, as well as marked limitations in a number of  
3 areas. If the ALJ had accepted Dr. Kokernot's opinion,  
4 Prince's mental impairments would have necessitated a  
5 finding of disability. See 20 C.F.R. Part 404, Subpart P,  
6 Appendix 1, Sections 12.04, 12.06; 20 C.F.R. § 404.1520a.  
7 However, because Dr. Kokernot's opinion was inconsistent  
8 with other substantial evidence in the record, the ALJ  
9 committed no error in rejecting his opinion. See 20 C.F.R.  
10 § 404.1527(c)(2). Four other physicians--Dr. Welch, Dr.  
11 Abdul Hameed, Dr. Brett Hartman, and Dr. Aaron Satloff--  
12 determined that Prince's mental limitations did not preclude  
13 her from performing all work. An ALJ is not required to  
14 accept the opinion of a treating physician over other  
15 contrary opinions, if the latter are more consistent with  
16 the weight of the evidence. See Diaz v. Shalala, 59 F.3d  
17 307, 313 n.5 (2d Cir. 1995) ("[T]he opinions of nonexamining  
18 sources [can] override treating sources' opinions provided  
19 they are supported by evidence in the record."); see also  
20 Burgess v. Astrue, 537 F.3d 117, 128 (2d Cir. 2008).

21  
22 For the foregoing reasons, and finding no merit in  
23 Prince's other arguments, we hereby **AFFIRM** the judgment of  
24 the district court.

25  
26 FOR THE COURT:  
27 CATHERINE O'HAGAN WOLFE, CLERK  
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